Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Time Warner Cable's Petition For	)	WC Docket No. 06-55
Declaratory Ruling That Competitive	)	
Local Exchange Carriers May	)	
Obtain Interconnection To Provide	)	
Wholesale Telecommunications Services	)	
To VoIP Providers	)	

REPLY COMMENTS OF THE SOUTH CAROLINA TELEPHONE COALITION

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SUMMARY

The issue raised by Time Warner is not ripe for declaratory ruling and, in fact, by seeking this declaratory ruling Time Warner seeks to have the Commission bypass the normal deliberative process and establish new law and policy. Nothing in Time Warner's Petition or in the comments filed by other parties suggests anything to the contrary and, in fact, the comments demonstrate exactly why a declaratory ruling is not appropriate. The Petition and the comments of Time Warner's proponents, taken as a whole, do not seek a declaration or clarification of the law, but merely present the "wish list" of Voice over Internet Protocol ("VoIP") service providers and those who would serve as conduits to enable them to obtain interconnection.

These carriers seek to have the Commission grant them "full interconnection rights" without corresponding obligations, and argue that this will speed competitive entry by VoIP providers and thereby fulfill the objectives of the Telecommunications Act of 1996.

VoIP providers are asking the Commission to ignore the clear language of the Act and to grant them preferential treatment. In order to justify the relief they seek, Time Warner's proponents argue broadly that the primary purpose of the 1996 amendments to the Communications Act of 1934 was to promote competition. In doing so, they conveniently ignore the dual – and sometimes conflicting – purposes of the Act, to promote competition and to preserve and advance universal service, as well as the important role Congress expressly reserved for the states in order to achieve the goals of the Act. There is no legal or factual basis upon which the Commission can grant Time Warner the relief it seeks, and Time Warner's Petition should be denied.

Time Warner's Petition represents nothing more than an attempt at an "end run" around pending rulemaking proceedings in which the Commission properly is considering the appropriate rules to establish with respect to VoIP service providers. These important decisions should be made in the context of a deliberative rulemaking with a full and complete record, and should not be made piece-meal on the basis of a wish list presented by VoIP service providers as to what they would like the law to be rather than what it actually is.

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The South Carolina Telephone Coalition ("SCTC"), an organization of rural telephone companies operating in the State of South Carolina, respectfully submits these reply comments, by and through its undersigned counsel. The SCTC submitted initial comments on April 10, 2006, in response to the public notice issued by the Federal Communications Commission (the "Commission") in the above-captioned proceeding.[1]

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[1] *Pleading Cycle Established For Comments on Time Warner Cable's Petition For Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection To Provide Wholesale Telecommunications Services To VoIP Providers*, WC Docket No. 06-55, Public Notice, DA 06-534 (rel. Mar. 6, 2006). The Wireline Competition Bureau subsequently granted an extension of time to file comments. *See* DA No. 06-639 (rel. Mar. 21, 2006).

DISCUSSION

I. Issuance of a Declaratory Order is Not Appropriate, Because Time Warner and Its Proponents Are Not Requesting a Declaration of Rights Under Existing Law, but Instead are Seeking Preferential Treatment and Circumvention of the Law.

Time Warner Cable ("Time Warner") seeks a declaratory ruling that competitive local exchange carriers ("CLECs") are entitled to interconnect with incumbent local exchange carriers ("ILECs") for the purpose of transmitting traffic to or from another (third party) service provider, such as a Voice over Internet Protocol ("VoIP")-based service provider.[2] The underlying facts of the South Carolina arbitration proceedings referenced by Time Warner are set forth in the SCTC's initial comments and, as discussed therein, the Public Service Commission of South Carolina ("SCPSC") correctly applied existing law and Commission regulations to limit the exchange of traffic under Section 251(b) of the Act to traffic originated on the respective networks of the parties to the agreement.

The issue raised by Time Warner is not ripe for declaratory ruling and, in fact, by seeking this declaratory ruling Time Warner seeks to have the Commission bypass the normal deliberative process and establish new law and policy. Nothing in Time Warner's Petition or in the comments filed by other parties suggests anything to the contrary. In fact, the comments demonstrate exactly why a declaratory ruling is not appropriate. The Petition and the comments of Time Warner's proponents, taken as a whole, do not appear to seek a declaration or clarification of the law, but merely present the "wish list" of Voice over Internet Protocol ("VoIP") service providers and those who would serve as conduits to enable them to obtain interconnection.

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[2] Petition at pp. 1-2, 12.

In seeking a declaratory ruling, Time Warner and its proponents are seeking to effectively short circuit rulemaking proceedings in which the Commission properly is considering the appropriate rules to establish with respect to the provision of VoIP service. The Commission can and should do so on the basis of a deliberative review and consideration of the full record that has already been developed in proceedings like the *IP-Enabled Services Proceeding*.[3] The Commission should not grant relief in a piece-meal fashion, as the Time Warner Petition asks, based on a wish list presented by VoIP service providers as to what they would like the law to be rather than what it actually is.

VoIP providers are asking the Commission to ignore the clear language of the Act and to grant them preferential treatment. They seek "full interconnection rights" as though they were telecommunications carriers entitled to such under the Act, but without being classified as telecommunications carriers, so as to avoid the attendant responsibilities and duties that are also provided for in the Act.[4]

Along those same lines, many commenting parties strenuously argue that it is not necessary for the Commission to reach the issue of classification of VoIP services in order to grant Time Warner's Petition.[5] Other commenters argue just as strenuously that classification of

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[3] *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

[4] *See, e.g.*, Comments of The VON Coalition at 2 ("Moreover, the FCC should clarify in any order issued in this proceeding that . . . VoIP service traffic qualifies for interconnection rights under Section 251 of the Act . . . ."); Advance-Newhouse Communications at 4 (in addition to granting Time Warner's requested declaratory ruling, "Advance-Newhouse urges the Commission to state clearly and plainly that the 1996 Act will be frustrated unless cable-based VoIP services have full and complete interconnection rights as against ILECs.")

[5] *See, e.g.*, Comments of Neutral Tandem, Inc. at 12; Global Crossing North America, Inc. at 4.

VoIP service is critical to this analysis and is exactly the point.[6] One thing is exceedingly clear: Those who urge the Commission not to classify VoIP services at this time, while urging full interconnection rights for VoIP service providers, are attempting to obtain a competitive advantage that is contrary to the provisions of the Act, because they do not want the Commission to make a full and fair ruling that encompasses both rights *and* obligations.[7] It would be consummately inequitable, not to mention contrary to existing law, to grant interconnection rights to VoIP providers without declaring them to be telecommunications carriers entitled to rights *and* subject to corresponding obligations under the Act. Not only would such a one-sided

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[6] *See, e.g.*, Comments of Qwest Communications International Inc. at 3; South Dakota Telecommunications Association et al. at 4; TCA, Inc. at 6; Home Telephone Company, Inc. and PBT, Inc. at 2 and 3; NECA, ITTA, NTCA and OPASTCO at 2-3.

[7] The VON Coalition argues that the Commission somehow has jurisdiction to order such rights without corresponding obligations because Time Warner's service falls within the *Vonage Order*. *See* Initial Comments of The VON Coalition at 2, citing *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211 (rel. November 12, 2004), appeal pending (8th Cir.) ("*Vonage Order*"); *see also* Comments of South Carolina Cable Television Ass'n at 9 (asserting that the *Vonage Order* precludes state common carrier regulation of VoIP offerings like Time Warner's). These arguments have no merit. First, it is not clear that Time Warner's service is the type of service contemplated in the *Vonage Order*. *See* pp. 136-138 and 183 of Hearing Transcript in SCPSC Docket No. 2004-280-C (attached as Exhibit C to the Comments of the Office of Regulatory Staff, filed in WC Docket No. 06-54) (SCTC witnesses Emmanuel Staurulakis and Keith Oliver testified regarding the differences between Vonage's service and Time Warner's Digital Phone VoIP service, including lack of portability, lack of need for specialized customer premises equipment, and other differences). Second, even if Time Warner's service falls within the scope of the *Vonage Order*, that order merely preempted states from applying certification and similar requirements on Vonage-like services. It did not address interconnection and traffic exchange obligations and, indeed, could not have ordered interconnection rights for VoIP providers without corresponding obligations, for all the reasons stated herein.

decision defy existing law and policy and provide a competitive advantage for VoIP providers, but it would also be contrary to the public interest.[8]

In their attempt to recast the state actions to suggest a problem that the Commission can and should correct, Time Warner and its proponents argue that the states have "denied interconnection rights."[9] This characterization of the state commissions' decisions is factually incorrect, and glosses over two very important points. First, at least in South Carolina, the parties to the arbitration proceedings below *are* interconnected under Sections 201(a) and 251(a) of the Act. Traffic is flowing and is not being blocked. The parties to the arbitration proceedings have executed and filed, and the Commission has approved, interconnection agreements.[10] "Interconnection rights," to the extent Time Warner may even assert them on MCI's behalf before the Commission in this manner, have not been denied. Second and, again, at least in South Carolina, it is not the indirect linking of networks under Section 251(a) that troubled the SCPSC but the indirect *exchange of traffic* under Section 251(b). As fully set forth in the SCTC's initial comments in this docket, the duty to exchange traffic with other carriers

[8] For example, with respect to local number portability, granting VoIP providers the rights they seek without also imposing parallel obligations would mean that they would be entitled to *obtain* ported numbers without a corresponding duty to *provide* ported numbers. A customer who ported a local telephone number from an ILEC to a VoIP provider would lose control of his or her own telephone number, which is contrary to the policy behind local number portability and to the public interest. This situation is exacerbated further when there is a CLEC in the middle of the process, because in such a situation even the entity that purportedly ported the number (i.e., the CLEC) does not retain control over that number. This is just one example of the inequities that could result when carriers are granted rights without being subject to parallel obligations.

[9] *See, e.g.*, Comments of South Carolina Cable Television Ass'n at 2.

[10] *See* Interconnection Agreements between MCI and the respective RLECs, on file with the SCPSC in Docket Nos. 2005-67-C and 2005-188-C.

extends only to traffic *originated on the respective carriers' networks* and does not extend to third party traffic.[11]

II. Time Warner and Its Proponents Erroneously Attempt to Justify the Requested Action Based Upon a Fundamentally Flawed Characterization of the Purposes of and Policies Behind the Act.

Expanding further upon their "wish list," VoIP providers would like to rewrite the law so that they are entitled not only to interconnect directly and without corresponding obligations, but to interconnect *and exchange traffic* indirectly through third party CLECs.[12] Many commenters argue this type of arrangement is beneficial because it would "speed" competitive entry into local markets.[13] In other words, they would like to be able to circumvent the law, which provides only for the exchange of traffic originated on the respective contracting parties' networks, *and* to completely ignore the timeframes and procedures contained in the Act with which all other carriers must comply. One commenting party went so far as to argue that this would be beneficial because it would give VoIP providers "leverage" in negotiating "appropriate"

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[11] *See* Initial Comments of SCTC at pp. 5-12. AT&T argues that transit service providers are intermediate carriers as well and should be granted the same interconnection rights as CLECs who seek to interconnect for the purpose of exchanging third-party VoIP traffic. *See* Comments of AT&T Inc. at 1; *see also* Comments of Neutral Tandem, Inc. at 7-8. This issue was not raised in Time Warner's Petition and is beyond the scope if this proceeding. In any event, the issue of voluntarily performing a transit function is separate and distinct from the issue of indirect traffic exchange of third parties' end-user customers.

[12] Contrary to some commenters' assertions, the Commission has not "affirmed" the "VoIP/CLEC partnership strategy" in its *E911 Order*. *See, e.g.*, Comments of Comcast at 8, referring to *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245 (2005) ("*E911 Order*") at para. 40. The Commission did not address interconnection or traffic exchange obligations in the *E911 Order*, but was merely listing, without endorsement, the different ways in which a VoIP provider theoretically could fulfill its E911 obligation.

[13] *See, e.g.*, Comments of Sprint Nextel Corporation at 4; Verizon at 5.

interconnection agreements with ILECs.[14] While VoIP providers would obviously like to have "leverage" and quick entry into local telephone markets, the law does not give them the preferential treatment they would like to have, and it would be inappropriate and contrary to the Act's policy of competitive neutrality for the Commission to grant Time Warner's request for declaratory ruling on this basis.

In order to justify the relief they seek, Time Warner's proponents argue broadly that *the* purpose of the 1996 amendments to the Communications Act of 1934 was to promote competition.[15] They conclude in substance that the Commission's duties, therefore, begin and end with promoting competition – in this case by issuing the requested declaratory ruling, which they argue will speed competitive entry. This argument is based on a fundamentally flawed premise – *i.e.*, that the purpose of the Act is to promote competition at all costs. While it is true that *one* of the principal purposes of the Act was to promote competition, Congress explicitly recognized that there were certain respects in which the objective of promoting competition had to be carefully balanced against other, equally important, public interest objectives, including the preservation and advancement of affordable local exchange telephone service in rural areas. The proponents' arguments in this case ignore the fact that Congress attempted to balance these

[14] Comments of Neutral Tandem, Inc. at 5.

[15] *See, e.g.*, Comments of Sprint Nextel Corporation at 7 ("Most state commissions recognize the investments of new service providers are exactly what the 1996 Act was intended to promote."); Advance-Newhouse Communications at 3 ("for the Commission to achieve its goal of facilities-based competition for residential customers, it must interpret the Act and its rules in a manner that encourages and enables such competition."); Comcast at 2 ("The two primary objectives of the Telecommunications Act of 1996 were to bring the benefits of phone competition to American consumers and to promote the deployment of advanced services") (footnotes omitted); National Cable & Telecommunications Ass'n at 2 ("The cable industry constitutes the best hope for fulfilling the goals of the 1996 Telecommunications Act by providing facilities-based voice competition for the American consumer."); Verizon at 4 (referring to "the basic policy in the 1996 Act to promote local telephone competition.")

equally important -- and sometimes conflicting -- goals, and created specific mechanisms by which tensions between the various objectives could be resolved on a case by case basis, and by those authorities closest to the problem and best able to address the specific concerns, *i.e.*, the states. This case presents precisely such a situation.

As a result, the proponents are fundamentally wrong -- and simply beg the relevant question -- when they argue that the objective of promoting competition justifies the relief they seek. In point of fact, the relief they seek (*i.e.*, a broad declaratory ruling and preemption order) is fundamentally at odds from a procedural standpoint with the structure of the Act, and it myopically focuses on only one of multiple public interest objectives Congress sought to achieve.

Another example of the proponents' misunderstanding of the Act and its structure, as it applies to the facts of the South Carolina arbitration proceedings, is their repeated reference to the obligations of ILECs under Section 251(c).[16] In fact, in South Carolina, MCI did not seek interconnection under Section 251(c) of the Act and the language and standards of Section 251(c) simply do not apply here.[17] The proponents seek to ignore the special considerations that apply when telecommunications carriers seek to provide competitive local service in areas served by rural telephone companies. Again, Congress has expressly and specifically provided that

[16] *See, e.g.*, Comments of Level 3 Communications at 4, 6, 7, 8, 9; Neutral Tandem, Inc. at 5, 6, 9; Sprint Nextel Corporation at 12; Advance-Newhouse Communications at 2, 7; BridgeCom International, Inc. et al. at 2, 3, 4, 7, 9, 12, 13, 14, 15; Alpheus Communications, LP et al. at 2, 5, 7; Broadwing Communications, LLC et al. at 2, 7, 8; South Carolina Cable Television Ass'n at 5, 10, 11, 12; National Cable & Telecommunications Ass'n at 5, 7.

[17] *See* Interconnection Agreements between MCI and the respective RLECs, on file with the SCPSC in Docket Nos. 2005-67-C and 2005-188-C, General Terms & Conditions, p. 1 (which specifically provide that MCI "has made a request for services under Sections 251(a) and (b) of the [Act] and has clarified that it is not seeking services under Section 251(c) of the Act.")

those considerations are important, and that they are to be examined and weighed by the *state commissions*.[18]

At least one commenter suggests that the SCPSC decision not to allow MCI to indirectly exchange Time Warner's traffic with the RLECs is somehow a prohibition or unreasonable restriction on "resale," in violation of Sections 251(b)(1) and 251(c)(4)(B) of the Act.[19] This argument is faulty for at least three reasons. First, as noted above, MCI did not request services under Section 251(c) and that provision does not apply to the South Carolina case. Second, it is disingenuous to characterize the CLEC's service in this case as a "value-added resale service" when, at most, what the CLEC can offer on a resale basis is transport *to* the ILEC's facilities and not the ability "to transmit traffic *over ILEC facilities*."[20] And finally, even if the service can properly be considered resale by the CLEC under Section 251(b)(1), only "unreasonable or discriminatory" conditions or limitations are prohibited. The requirement to have third parties enter into direct traffic exchange agreements with the ILECs is not unreasonable or discriminatory. As the SCPSC properly found, it is in keeping with the Act and applicable Commission rules and orders.[21]

CONCLUSION

Time Warner's Petition for Declaratory Ruling should be denied. The issue raised is not ripe for declaratory ruling and, in fact, by seeking this declaratory ruling Time Warner seeks to

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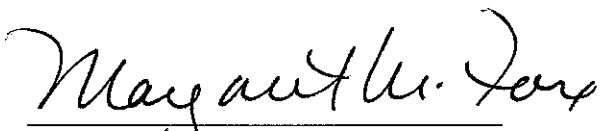
[18] *See, e.g.*, 47 U.S.C. §§ 251(f)(1); 253(f).
[19] *See* Comments of Neutral Tandem, Inc. at 9.
[20] *See* Comments of Neutral Tandem, Inc. at 9 ("Neutral Tandem provides a value-added resale service enabling third party providers to transmit traffic *over ILEC facilities*.") (Emphasis added.)
[21] *See* SCPSC Order No. 2005-544 at p. 10, SCPSC Order No. 2006-2 at p. 9. (These orders can be found at Tab 8 and Tab 11, respectively, of the Appendix to Time Warner's Petition.)

have the Commission bypass the normal deliberative process and establish new law and policy. Time Warner and its supporters have presented a "wish list" to the Commission that seeks preferential treatment at odds with existing law, fairness, and common sense. Time Warner asks the Commission to issue a declaratory ruling in favor of competition at all costs, without recognizing the complex and conflicting goals embodied in the Act. There is simply no legal or factual basis upon which the Commission can grant Time Warner the relief it seeks, and the Petition should be denied.

Respectfully Submitted,



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To VoIP Providers	)	

I hereby certify that a copy of the foregoing **Reply Comments of the South Carolina Telephone Coalition** was served this 25th day of April, 2006, by e-mailing true and correct copies thereof to the following persons:

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